

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOMAS P.JOSEPH

WEDNESDAY, THE 15TH OCTOBER 2008 / 23RD ASWINA 1930

Crl.Rev.Pet.No. 1215 of 2001(B)

SC.198/1998 of ASSISTANT SESSIONS COURT, IRINJALAKUDA

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REVN. PETITIONER/PW1 (DEFACTO COMPLAINANT) :

E.L.JOSBY, S/O.E.P.LOUIS,
ELANJIKKAL HOUSE, P.O.MALA, THRISSUR.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENTS/ACCUSED AND STATE :

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1. SUBRAN @ SUBRAMANIAN,
S/O.MEPPURATH KOCHERAN,
KUNNATHUKADU, VADAMA VILLAGE.
 2. VIJAYAN, S/O.KURUMBAN,
VANGIALAKKAL HOUSE, VADAMA VILLAGE,
KUNNATHUKADU DESOM
 3. MANI @ SETHUMADHAVAN,
AMBASHAKATTU HOUSE, VADAMA VILLAGE,
KUNNATHUKADU DESOM
 4. LALAN, S/O.CHENNAMAKKAL KRISHNAN,
VADAMA VILLAGE, NEITHAKUDI,
MUKUNDAPURAM TALUK.
 5. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

ADV. SRI.S.RAJEEV - R1 TO 4
PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 15/10/2008, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

THOMAS P. JOSEPH, J.

CRL. R. P.No.1215 of 2001

Dated this the 15th day of October, 2008

O R D E R

Respondents 1 to 4 faced trial in the court of learned Principal Assistant Sessions Judge, Irinjalakuda in S.C No.198/1998 for offences punishable under Sections 109, 120 (B), 193, 201, 202, 212, 436 and 427 read with Section 34 of the Penal Code. Case is that 4th respondent purchased a portion of the building in question from PW16 as per Exhibit P6, wanted to construct shopping complex after demolishing the said portion of building and with the cooperation of PW16, owner of the remaining part of building and for the said purpose, he entered into criminal conspiracy with respondents 1 to 3 and as part of that common design, first respondent set fire to the said building causing loss to PWs 1 and 2 and others. Information regarding the fire incident was given to the police by the 4th respondent himself based on which police registered a case for fire accident. Investigation revealed the involvement of respondents 1 to 4 in the incident and thereon, final report was filed against them for the said offences. Respondents 1 to 4

faced trial, were found not guilty and acquitted of the charges against them. PW1 is aggrieved by the acquittal and filed this revision petition.

2. Heard both sides.

3. Counsel for revision petitioner contented that there are sufficient circumstances to show that respondents 1 to 4 are involved in the fire incident. Learned counsel submitted that evidence revealed that furniture kept in the room belonging to 4th respondent as per Exhibit P9 was removed before the incident. It is also contented by learned counsel that the extra judicial confession made by the second respondent proved the involvement of respondents 1 to 4. Recovery of material objects is a further circumstance that indicated the involvement of respondents 1 to 4. In the circumstance, it is contented that acquittal of respondents 1 to 4 was not justified. Counsel for respondents 1 to 4 submitted that there is no evidence to hold respondents 1 to 4 guilty of any offence.

4. It is settled position of law that interference by the revisional court against judgment of acquittal is called for only when

gross injustice has occasioned from violation of some fundamental principles of law or procedure or, that the view taken by the trial court is palpably wrong. If the view taken by the trial court is probable, revisional court will not be justified in substituting that view with its own view.

5. PWs 1 to 6 claimed that they had seen the building on fire on the relevant day and time. According to PW6, 4th respondent even tried to put off the fire. PW9 is the salesman of the 4th respondent. He was examined to show that he had put lock on the door of that shop room which was later recovered. PW9 refused to support prosecution. He admitted that he had seen few cigarette butts (M.O.1 series) at the place of occurrence. PW10 is attesting witness to Exhibit P1, mahazar for seizure of M.O. 3, lock. He found a handcuffed man brought by police taking M.O.3 series, but he was not able to identify whether that man is among respondents 1 to 4. PW10 identified M.O.4, axo blade allegedly recovered as per information given by the first respondent. PW11 attested Exhibit P2 mahazar for seizure of M.O. 1 series. PW12 is an attestator in Exhibit P3, mahazar for recovery of

torch and bath towel allegedly at the instance of first respondent. He did not support the prosecution. PW13 is an attestator in Exhibit P3 but did not support the prosecution. PW14 is an attestator in Exhibit P6, mahazar for seizure of M.O. 5, big shopper allegedly found in the house of second respondent. PW15 is running a ration shop near the house of second respondent. He was examined to say that second respondent had purchased about 10 litres of kerosene from his shop immediately before the incident. PW15 refused to support prosecution. PW16 admitted that portion of the building which was gutted in fire was sold to the 4th respondent as per Exhibit P9. He also said about the desire of the 4th respondent to construct a shopping complex in place of the existing building. PW17 is an attestator in P11, Mahazar. PW18 stated that the 4th respondent told to him that revision petitioner had preferred a false complaint against him to the D.Y.S.P and sought assistance of PW18. PW19 is a photographer who is said to have taken the photographs of the building which was gutted in fire but the photos or negatives are not seen produced in court. PW20 is an employee of the 4th respondent. He did not support the prosecution. PW22 is a gold

smith and claimed that himself, second respondent and PW21 went to the 4th respondent. According to him, second respondent told to him that the first respondent set fire to the building as per the instruction of 4th respondent. In cross examination, he stated that he was questioned by the police after a month of the incident. PW23 is a head load worker and claimed to have helped the police to take out the lock from the well. He did not support the prosecution in full. PWs 25 and 26 are officials of Insurance Company where the building in question had been insured. Their evidence is that on the building gutted in fire, a claim for compensation was made by the 4th respondent but the claim was not entertained since the Insurance Company suspected the involvement of 4th respondent in the fire incident. PWs26 and 27 are officials of the fire station who put off the fire. Exhibit P16 is the register maintained in the Fire Station. In Exhibit P16, information received and recorded is that fire was due to electric short circuit . PW28 is the Electrical Inspector and is said to have inspected the premises. Exhibit P19 is the report. He does not think that fire was due to electric short circuit. In cross examination he stated that he did not

conduct any insulation test. PW29 is a police constable who assisted PW32 in conducting investigation. He stated about the seizure of certain items of furniture from the house of one Basheer (neither a witness nor accused) as per Exhibit P2. PW30, head constable is also an attestator in the mahazar for seizure of lock at the instance of 4th respondent. PW31, sub inspector recorded the statement of 4th respondent (Exhibit 23(a)) and registered the case. Exhibit P23 is the F.I.R. He said that had been to the spot and the mahazar for place of occurrence was prepared as pointed out by 4th respondent (Exhibit P2). M.Os found at the scene were taken to custody as per Exhibit P2. PW32 conducted investigation. He arrested respondents 1 and 2 and on the information allegedly given by them, discovered the axo blade and lock (from the well) and the big shopper.

6. It is true that evidence would show that in the course of fire incident, 4th respondent had been to the premises and that as per the version of PW23, second respondent had told him that the first respondent set fire to the building at the instance of 4th respondent. It is also true that certain recoveries are made on information allegedly

given by respondents 1 and 2, but these circumstances are not sufficient to reach a conclusion that the respondents 1 to 4 entered into any criminal conspiracy and set fire to the building as alleged. It is pertinent to note that even as per PW23, it is not that the first respondent told him about the alleged conspiracy but the second respondent telling him about what the first respondent had told to the second respondent. That evidence by itself is not sufficient to warrant a conviction. I find from the judgment under challenge that evidence was considered by learned Assistant Sessions Judge, who came to the conclusion that prosecution case has not proved its case.

7. It is not shown that the court below violated any fundamental principle of law or procedure which resulted in injustice requiring interference by this court. I am also not persuaded to think that the view taken by the court below is palpably wrong.

Revision petition is therefore, dismissed.

THOMAS P. JOSEPH, JUDGE

scm